IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

	AMERICA,	OF	STATES	UNITED	
	Plaintiff				
Cmiminol		v.			

Jesus Torres-Coss,

Defendant

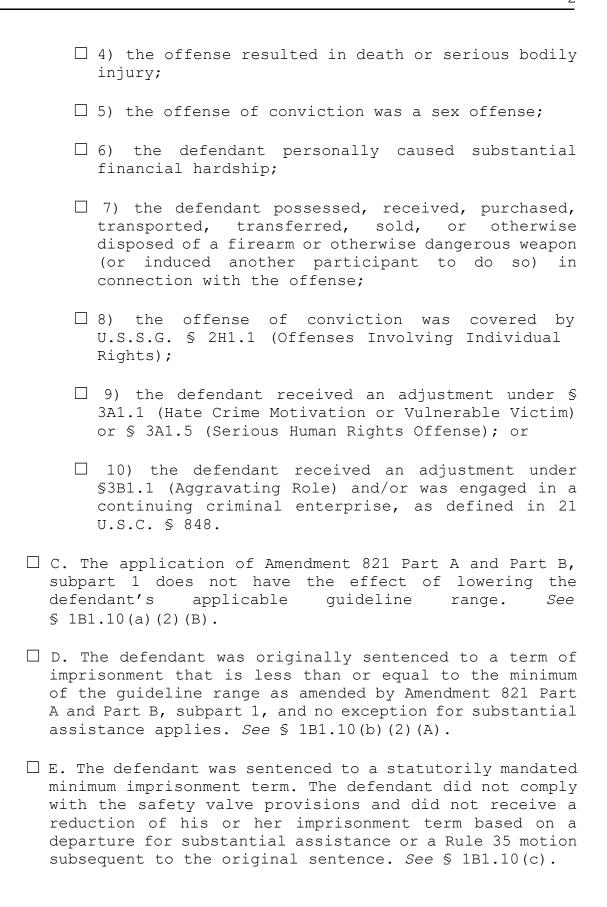
Criminal No. 17-cr-621-15-CVR

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

on the following factor(s):
☐ A. The guidelines range that applied in the defendant' case was not determined by U.S.S.G. § 4A1.1(d) o defendant's status as a zero-point offender unde Chapter 4, Part A.
\square B. The defendant does not meet <u>all</u> of condition specified by § 4C1.1. Specifically, one or more of th following criteria applies:
\Box 1) the defendant has criminal history points from Chapter Four, Part A;
☐ 2) the defendant received an adjustment under U.S.S.G. § 3A1.4 (Terrorism);
\Box 3) the defendant used violence or credible threats of violence in connection with the offense;



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or pro bono, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

□ The defendant may be eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons: Defendant pled guilty to drug trafficking (Count One) and use of a firearm in connection with that offense (Count Six). Dkt. 1201 (Plea Agreement) at 1-3. He received the 60-month mandatory minimum sentence for the firearm offense charged in Count Six. See 1363 (PSR) at 24 ¶ 147.

As for Count One, Defendant received five criminal history points, including two status points because he committed this offense while on supervised release. *Id.* at 18 ¶ 117. He was thus placed in criminal history category III, *Id*, giving him a guideline range of 30 to 37 months. *Id.* at 24 ¶ 149. He was sentenced to 28 months, but given 10 months of credit for the time he was detained for revocation proceedings in his other case. *See* Dkt. 1387 (Statement of Reasons) at 3.

Under Amendment 821, Defendant would not have received two points for committing this offense while on supervised release. With 3 criminal history points he would be placed in criminal history category II, giving him a guideline range of 27 to 33 months.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 29th day of January, 2024.

s/ Bruce J. McGiverin
BRUCE J. McGIVERIN